PART IV

Section 1-A

CENTRAL BILLS AND REPORTS OF SELECT COMMITTEES THEREON

NOTIFICATION

(LAW DEPARTMENT)

No. LWA 67 *LCA* 65, *dated Bangalore*, 22*nd September* 1965
(*Bhadrapada*, 31 *Saka Era* 1887.)

Ordered that the Payment of Bonus Bill, 1965 (Central Bill No. 49 of 1965), which has been published in the *Gazette of India*, Extraordinary, Part II, Section 2, dated the 16th August 1965, be republished in the *Mysore Gazette*, for general information.

By Order and in the name of the Governor of Mysore,

B. RAMACHANDRA RAO,
Under Secretary to Government, I/c,
Law Department.

BILL NO. 49 OF 1965.

A Bill to provide for the payment of bonus to persons employed in certain establishments and for matters connected therewith.

BE it enacted by Parliament in the Sixteenth Year of the Republic of India as follows :—

1. Short title, extent and application.—(1) This Act may be called the Payment of Bonus Act, 1965.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) Save as otherwise provided in this Act, it shall apply to—

(*a*) every factory ; and

(*b*) every other establishment in which twenty or more persons are employed on any day during an accounting year.

(4) Save as otherwise provided in this Act, the provisions of this Act shall, in relation to a factory or other establishment to which this Act applies, have effect in respect of the accounting year commencing on any day in the year 1964 and in respect of every subsequent accounting year.

(5) An establishment to which this Act applies under clause (*b*) of sub-section (3) shall continue to be governed by this Act notwithstanding that the number of persons employed therein falls below twenty.

2. Definitions.—In this Act, unless the context otherwise requires,—

(1) "accounting year" means—

(*i*) in relation to a corporation, the year ending on the day on which the books and accounts of the corporation are to be closed and balanced ;

(*ii*) in relation to a company, the period in respect of which any profit and loss account of the company laid before it in annual general meeting is made up, whether that period is a year or not ;

(*iii*) in any other case—

(*a*) the year commencing on the 1st day of April ; or

(*b*) if the accounts of an establishment maintained by the employer thereof are closed and balanced on any day other than the 31st day of March, then, at the option of the

employer, the year ending on the day on which its accounts are so closed and balanced :

Provided that an option once exercised by the employer under paragraph (*b*) of this sub-clause shall not again be exercised except with the previous permission in writing of the prescribed authority and upon such conditions as that authority may think fit ;

(2) "agricultural income" shall have the same meaning as in the Income-tax Act ;

(3) "agricultural income-tax law" means any law for the time being in force relating to the levy of tax on agricultural income ;

(4) "allocable surplus" means—

(*a*) in relation to an employer, being a company (other than a banking company) which has not made the arrangements prescribed under the Income-tax Act for the declaration and payment within India of the dividends payable out of its profits in accordance with the provisions of section 194 of that Act, sixty-seven per cent of the available surplus in an accounting year ;

(*b*) in any other case, sixty per cent of such available surplus,

and includes any amount treated as such under sub-section (2) of section 34 ;

(5) " appropriate Government " means—

(*i*) in relation to an establishment in respect of which the appropriate Government under the Industrial isputes ct, 1947 14 of 1947 , is

(7) "award" means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Tribunal constituted under the Industrial Disputes Act, 1947 (14 of 1947), or by any other authority constituted under any corresponding law relating to investigation and settlement of industrial disputes in force in a State and includes an arbitration award made under section 10A of that Act or under that law ;

(8) "banking company" means a banking company as defined in section 5 of the Banking Companies Act, 1949 (10 of 1949), and includes the State Bank of India, any subsidiary bank as defined in the State Bank of India Subsidiary Banks) Act, 1959 (38 of 1959), and any other banking institution which may be notified in this behalf by the Central Government ;

(9) "company" means any company as defined in section 3 of the Companies Act, 1956 (1 of 1956), and includes a foreign company within the meaning of section 591 of that Act ;

(10) "co-operative society" means a society registered or deemed to be registered under the Co-operative Societies Act, 1912 (2 of 1912), or any other law for the time being in force in any State relating to co-operative societies ;

(11) "corporation" means any body corporate established by or under any Central, Provincial or State Act but does not include a company or a co-operative society ;

(12) "direct tax" means—

(*a*) any tax chargeable under—

(*i*) the Income-tax Act ;

(*ii*) the Super Profits Tax Act, 1963 (14 of 1963) ;

(*iii*) the Companies (Profits) Surtax Act, 1964 (7 of 1964) ;

(*iv*) the agricultural income-tax law ; and

(*b*) any other tax which, having regard to its nature or incidence, may be declared by the Central Government, by notification in the Official Gazette, to be a direct tax for the purposes of this Act ;

(13) "employee" means any person (other than an apprentice) employed on a salary or wage not exceeding one thousand and six hundred rupees per mensem in any industry to do any skilled or unskilled manual, supervisory, managerial, administrative, technical or clerical work for hire or reward, whether the terms of employment be express or implied ;

(14) "employer" includes—

(*i*) in relation to an establishment which is a factory, the owner or occupier of the factory, including the agent of such owner or occupier, the legal representative of a deceased owner or occupier and where a person has been named as a manager of the factory under clause (*f*) of sub-section (1) of section 7 of the Factories Act, 1948 (63 of 1948), the person so named ; and

(*ii*) in relation to any other establishment, the person who, or the authority which, has the ultimate control over the affairs of the establishment and where the said affairs are entrusted to a manager, managing director or managing agent, such manager, managing director or managing agent ;

(15) "establishment in private sector" means any establishment other than an establishment in public sector ;

(16) "establishment in public sector" means an establishment owned, controlled or managed by—

(*a*) a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956) ;

(*b*) a corporation in which not less than forty per cent of its capital is held (whether singly or taken together) by—

(*i*) the Government ; or

(*ii*) the Reserve Bank of India ; or

(*iii*) a corporation owned by the Government or the Reserve Bank of India ;

(17) "factory" shall have the same meaning as in clause (*m*) of section 2 of the Factories Act, 1948 (63 of 1948) ;

(18) "gross profits" means the gross profits calculated under section 4 ;

(19) "Income-tax Act" means the Income-tax Act, 1961 (43 of 1951) ;

(20) "prescribed" means prescribed by rules made under this Act ;

(21) "salary or wage" means all remuneration (other than remuneration in respect of over-time work) capable of being expressed in terms of money, which would, if the terms of employment, express or implied, were fulfilled, be payable to an employee in respect of his employment or of work done in such employment and includes dearness allowance (that is to say, all cash payments, by whatever name called, paid to an employee on account of a rise in the cost of living), but does not include—

(*i*) any other allowance which the employee is for the time being entitled to ;

(*ii*) the value of any house accommodation or of supply of light, water, medical attendance or other amenity or of any service of or any concessional supply of foodgrains or other articles ;

(*iii*) any travelling concession ;

(*iv*) any bonus (including incentive, production and attendance bonus) ;

(*v*) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the employee under any law for the time being in force ;

(*vi*) any retrenchment compensation or any gratuity or other retirement benefit payable to the employee or any *ex gratia* payment made to him ;

(*vii*) any commission payable to the empoyee.

Explanation.—Where an employee is given in lieu of the whole or part of the salary or wage payable to him, free food allowance or free food by his employer, such food allowance or the value of such food shall, for the purpose of this clause be deemed to form part of the salary or wage of such employee ;

(22) words and expressions used but not defined in this Act and defined in the Industrial Disputes Act, 1947 (23 of 1947), shall have the meanings respectively assigned to them in that Act.

3. Establishments to include departments, undertakings and branches.—Where an establishment consists of different departments or undertakings or has branches, whether situated in the same place or in different places, all such departments or undertakings or branches shall be treated as parts of the same establishment for the purpose of computation of bonus under this Act :

Provided that where for any accounting year a separate balance-sheet and profit and loss account are prepared and maintained in respect of any such department or undertaking or branch, then, such department or undertaking or branch shall be treated as a separate establishment for the purpose of computation of bonus under this Act for that year, unless such department or undertaking or branch was, immediately before the commencement of that accounting year treated as part of the establishment for the purpose of computation of bonus.

4. Computation of gross profits.—The gross profits derived by an employer from an establishment in respect of any accounting year shall—

(*a*) in the case of a banking company, be calculated in the manner specified in the First Schedule ;

(*b*) in any other case, be calculated in the manner specified in the Second Schedule.

5. Computation of available surplus.—The available surplus in respect of any accounting year shall be the gross profits for that year after deducting therefrom the sums referred to in section 6.

6. Sums deductible from gross profits.—The following sums shall be deducted from the gross profits as prior charges, namely :—

(*a*) any amount by way of depreciation admissible in accordance with the provisions of sub-section (1) of section 32 of the Income-tax Act, or in accordance with the provisions of the agricultural income-tax law, as the case may be :

Provided that where an employer has been paying bonus to his employees under a settlement or an award or agreement made before the 29th May, 1965, and subsisting on that date after deducting from the gross profits national normal depreciation, then, the amount of depreciation to be deducted under this clause shall, at the option of such employer (such option to be exercised once and within one year from that date) continue to be such national normal depreciation ;

(*b*) any amount by way of development rebate or development allowance which the employer is entitled to deduct from his income under the Income-tax Act ;

(*c*) subject to the provisions of section 7, any direct tax which the employer is liable to pay for the accounting year in respect of his income, profits and gains during that year ;

(*d*) such further sums as are specified in respect of the employer in the Third Schedule.

7. Calculation of direct tax payable by the employer.—For the purpose of clause (*c*) of section 6, any direct tax payable by the employer for any accounting year shall, subject to the following provisions, be calculated at the

rates applicable to the income of the employer for that year, namely :—

(*a*) in calculating such tax no account shall be taken of—

(*i*) any loss incurred by the employer in respect of any previous accounting year and carried forward under any law for the time being in force relating to direct taxes ;

(*ii*) any arrears of depreciation which the employer is entitled to add to the amount of the allowance for depreciation for any following accounting year or years under sub-section (2) of section 32 of the Income-tax Act ;

(*iii*) any exemption conferred on the employer under section 84 of the Income-tax Act or of any deduction to which he is entitled under sub-section (1) of section 101 of that Act, as in force immediately before the commencement of the Finance Act, 1965 (10 of 1965) ;

(*b*) where the employer is a religious or a charitable institution to which the provisions of section 32 do not apply and the whole or any part of its income is exempt from tax under the Income-tax Act, then, with respect to the income so exempted, such institution shall be treated as if it were a company in which the public are substantially interested within the meaning of that Act ;

(*c*) where the employer is an individual or a Hindu undivided family, the tax payable by such employer under the Income-tax Act shall be calculated on the basis that the income derived by him from the establishment is his only income ;

(*d*) where the income of any employer includes any profits and gains derived from the export of any goods or merchandise out of India and

any rebate on such income is allowed under any law for the time being in force relating to direct taxes, then, no account shall be taken of such rebate ;

(*e*) no account shall be taken of any rebate (other than development rebate or development allowance) or credit or relief or deduction (not hereinbefore mentioned in this section) in the payment of any direct tax allowed under any law for the time being in force relating to direct taxes or under the relevant annual Finance Act, for the development of any industry.

8. Eligibility for bonus.—Every employee shall be entitled to be paid by his employer in an accounting year, bonus, in accordance with the provisions of this Act, provided he has worked in the establishment for not less than thirty working days in that year.

9. Disqualification for bonus.—Notwithstanding anything contained in this Act, an employee shall be disqualified from receiving bonus under this Act, if he is dismissed from service for—

(*a*) fraud ; or

(*b*) riotous or violent behaviour while on the premises of the establishment ; or

(*c*) theft, misappropriation or sabotage of any property of the establishment.

10. Payment of minimum bonus.—Every employer shall be bound to pay to every employee who has worked in the establishment for all the working days in an accounting year a minimum bonus which shall be four per cent of the salary or wage of the employee for the accounting year or forty rupees, whichever is higher, whether there are profits in the accounting year or not :

Provided that where such employee has not completed fifteen years of age at the beginning of the accounting

year, the provisions of this section shall have effect in relation to such employee as if for the words "forty rupees", the words "twenty-five rupees" were substituted.

11. Payment of maximum bonus.—(1) Where in respect of any accounting year the allocable surplus exceeds the amount of minimum bonus payable to the employees under section 10, the employer shall, in lieu of such minimum bonus, be bound to pay to every employee who has worked in the establishment for all the working days in the accounting year bonus which shall be an amount in proportion to the salary or wage of the employee for the accounting year subject to a maximum of twenty per cent of such salary or wage.

(2) In computing the allocable surplus under this section the amount set on or the amount set off under the provisions of section 15 shall be taken into account in accordance with the provisions of that section.

12. Calculation of bonus with respect to certain employees.—Where the salary or wage of an employee exceeds seven hundred and fifty rupees per mensem, the bonus payable to such employee under section 10 or, as the case may be, under section 11, shall be calculated as if his salary or wage were seven hundred and fifty rupees per mensem.

13. Proportionate reduction of bonus in certain cases.—Where an employee has not worked for all the working days in any accounting year, the amount of bonus to which he shall be entitled under section 10, or, as the case may be, under section 11, shall be proportionately reduced.

14. Computation of number of working days.—In computing for the purposes of sections 10, 11 and 13 the number of days on which an employee has worked in

an establishment in any accounting year, the days on which—

(*a*) he has been laid off under an agreement or as permitted by standing orders under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under the Industrial Disputes Act, 1947 (14 of 1947), or under any other law applicable to the establishment ;

(*b*) he has been on leave with salary or wage ;

(*c*) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment ; and

(*d*) the employee has been on maternity leave with salary or wage,

during the accounting year shall be included.

15. Set on and set off of allocable surplus.—(1) Where for any accounting year the allocable surplus exceeds the amount of maximum bonus payable to the employees in the establishment under section 11, then, the excess shall, subject to a limit of twenty per cent of the total salary or wage of the employees employed in the establishment in that accounting year, be carried forward for being set on in the succeeding accounting year and so on up to and inclusive of the fourth accounting year to be utilised for the purpose of payment of bonus in the manner illustrated in the Fourth Schedule.

(2) Where for any accounting year, there is no available surplus or the allocable surplus in respect of that year falls short of the amount of minimum bonus payable to the employees in the establishment under section 10, and there is no amount or sufficient amount carried forward and set on under sub-section (1) which could be utilised for the purpose of payment of the minimum bonus, then, such minimum amount or the deficiency, as the case may be, shall be carried forward for being set off in the succeeding accounting year and so on up to and inclusive of the fourth accounting year in the manner illustrated in the Fourth Schedule.

(3) The principle of set on and set off as illustrated in the Fourth Schedule shall apply to all other cases not covered by sub-section (1) or sub-section (2) for the purpose of payment of bonus under this Act.

(4) Where in any accounting year any amount has been carried forward and set on or set off under this section, then, in calculating bonus for the succeeding accounting year, the amount of set on or set off carried forward from the earliest accounting year shall first be taken into account.

16. Special provisions with respect to certain establishments.—(1) Where an establishment is newly set up, whether before or after the commencement of this Act, the employees of such establishment shall be entitled to be paid bonus under this Act only—

(*a*) from the accounting year in which the employer derives profit from such establishment ; or

(*b*) from the sixth accounting year following the accounting year in which the employer sells the goods produced or manufactured by him or renders services, as the case may be, from such establishment,

whichever is earlier :

Provided that in the case of any such establishment the employees thereof shall not, save as otherwise provided in section 33, be entitled to be paid bonus under this Act in respect of any accounting year prior to the accounting year commencing on any day in the year 1964.

Explanation I.—For the purpose of this section, an establishment shall not be deemed to be newly set up merely by reason of a change in its location, management, name or ownership.

Explanation II.—For the purpose of clause (*a*), an employer shall not be deemed to have derived profit in any accounting year unless—

(*a*) he has made provision for that year's depreciation to which he is entitled under the Income-tax

Act or, as the case may be, under the agricultural income-tax law; and

(*b*) the arrears of such depreciation and losses incurred by him in respect of the establishment for the previous accounting years have been fully set off against his profits.

Explanation III.—For the purpose of clause (*b*), sale of the goods produced or manufactured during the course of the trial run of any factory or of the prospecting stage of any mine or an oil-field shall not be taken into consideration and where any question arises with regard to such production or manufacture, the decision of the appropriate Government, made after giving the parties a reasonable opportunity of representing the case, shall be final and shall not be called in question by any court or other authority.

(2) The provisions of sub-section (1) shall, so far as may be, apply to new departments or undertakings or branches set up by existing establishments :

Provided that if an employer in relation to an existing establishment consisting of different departments or undertakings or branches (whether or not in the same industry) set up at different periods has, before the 29th May, 1965, been paying bonus to the employees of all such departments or undertakings or branches irrespective of the date on which such departments or undertakings or branches were set up, on the basis consolidated profits computed in respect of all such departments or undertakings or branches, then, such employer shall be liable to pay bonus in accordance with the provisions of this Act to the employees of all such departments or undertakings or branches (whether set up before or after that date) on the basis of the consolidated profits computed as aforesaid.

17. Adjustment of customary or interim bonus against bonus payable under the Act.—Where in any accounting year—

(*a*) an employer has paid any puja bonus or other customary bonus to an employee ; or

(*b*) an employer has paid a part of the bonus payable under this Act to an employee before the date on which such bonus becomes payable,

then the employer shall be entitled to deduct the amount of bonus so paid from the amount of bonus payable by him to the employee under this Act in respect of that accounting year and the employee shall be entitled to receive only the balance.

18. Deduction of certain amounts from bonus payable under the Act.—Where in any accounting year, an employee is found guilty of misconduct causing financial loss to the employer, then, it shall be lawful for the employer to deduct the amount of loss from the amount of bonus payable by him to the employee under this Act in respect of that accounting year only and the employee shall be entitled to receive the balance, if any.

19. Time-limit for payment of bonus.—All amounts payable to an employee by way of bonus under this Act shall be paid in cash by his employer—

(*a*) where there is a dispute regarding payment of bonus pending before any authority under section 22, within a month of the settlement or award in respect of such dispute ;

(*b*) in any other case, within a period of eight months from the close of the accounting year :

Provided that the appropriate Government or such authority as the appropriate Government may specify in this behalf may, upon an application made to it by the employer and for sufficient reasons, by order, extend the said period of eight months to such further period or periods as it thinks fit ; so, however, that the total period so extended shall not in any case exceed two years.

20. Application of Act to establishments in public sector in certain cases.—(1) If in any accounting year an establishment in public sector sells any goods produced

or manufactured by it or renders any services, in competition with an establishment in private sector, and the income from such sale or services or both is not less than twenty per cent of the gross income of the establishment in public sector for that year, then, the provisions of this Act shall apply in relation to such establishment in public sector as they apply in relation to a like establishment in private sector.

(2) An establishment in public sector to which this Act applies shall continue to be governed by this Act notwithstanding that in any subsequent accounting year its income from the sale of goods produced or manufactured by it or from services rendered or from both, in competition with an establishment in private sector, falls below twenty per cent of its gross income for that accounting year.

21. Recovery of bonus due from an employer.— Where any money is due to an employee by way of bonus from his employer under a settlement or an award or agreement, the employee himself or any other person authorised by him in writing in this behalf, or in the case of the death of the employee, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government or such authority as the appropriate Government may specify in this behalf is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue :

Provided that every such application shall be made within one year from the date on which the money became due to the employee from the employer :

Provided further that any such application may be entertained after the expiry of the said period of one year, if the appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period.

Explanation.—In this section and in sections 22, 23, 24 and 25 "employee" includes a person who is entited to the payment of bonus under this Act but who is no longer in employment.

22. Reference of disputes under the Act.—*Where any dispute arises between an employer and his employees with respect to the bonus payable under this Act or with respect to the application of this Act to an establishment in public sector, then, such dispute shall be deemed to be an industrial dispute within the meaning of the Industrial Disputes Act,* 1947 (14 *of* 1947), *or of any corresponding law relating to investigation and settlement of industrial disputes in force in a State and the provisions of that Act or, as the case may be, such law, shall save as otherwise expressly provided, apply accordingly.*

23. Presumption about accuracy of balance-sheet and profit and loss account of corporations and companies.—(1) Where, during the course of proceedings before any arbitrator or Tribunal under the Industrial Disputes Act, 1947 (14 of 1947,) or under any corresponding law relating to investigation and settlement of industrial disputes in force in a State (hereinafter in this section and in sections 24 and 25 referred to as the "said authority") to which any dispute of the nature specified in section 22 has been referred, the balance-sheet and the profit and loss account of an employer, being a corporation or a company (other than a banking company), duly audited by the Comptroller and Auditor-General of India or by auditors duly qualified to act as auditors of companies under sub-section (1) of section 226 of the Companies Act, 1956 (1 of 1956), are produced before it, then, the said authority may presume the statements and particulars contained in such balance-sheet and profit and loss account to be accurate and it shall not be necessary for the corporation or the company to prove the accuracy of such statements and particulars by the filing of an affidavit or by any other mode :

Provided that where the said authority is satisfied that the statements and particulars contained in the balance-

sheet or the profit and loss account of the corporation or the company are not accurate, it may take such steps as it thinks necessary to find out the accuracy of such statements and particulars.

(2) When an application is made to the said authority by any trade union being a party to the dispute or where there is no trade union, by the employees being a party to the dispute, requiring any clarification relating to any item in the balance-sheet or the profit and loss account, it may, after satisfying itself that such clarification is necessary, by order, direct the corporation or, as the case may be, the company, to furnish to the trade union or the employees such clarification within such time as may be specified in the direction and the corporation or, as the case may be, the company, shall comply with such direction.

24. Audited accounts of banking companies not to be questioned.—(1) Where any dispute of the nature specified in section 22 between an employer, being a banking company, and its employees has been referred to the said authority under that section and during the course of proceedings the accounts of the banking company duly audited are produced before it, the said authority shall not permit any trade union or employees to question the correctness of such accounts, but the trade union or the employees may be permitted to obtain from the banking company such information as is necessary for verifying the amount of bonus due under this Act.

(2) Nothing contained in sub-section (1) shall enable the trade union or the employees to obtain any information which the banking company is not compelled to furnish under the provisions of section 34A of the Banking Companies Act, 1949 (10 of 1949).

25. Audit of accounts of employers, not being corporations or companies.—(1) Where any dispute of the nature specified in section 22 between an employer, not

being a corporation or a company, and his employees has been referred to the said authority under that section and the accounts of such employer audited by any auditor duly qualified to act as auditor of companies under sub-section (1) of section 226 of the Companies Act, 1956 (1 of 1956), are produced before the said authority, the provisions of section 23, shall, so far as may be, apply to the accounts so audited.

(2) When the said authority finds that the accounts of such employer have not been audited by any such auditor and it is of opinion that an audit of the accounts of such employer is necessary for deciding the question referred to it, than, it may, by order, direct the employer to get his accounts audited within such time as may be specified in the direction or within such further time as it may allow by such auditor or auditors as it thinks fit and thereupon the employer shall comply with such direction.

(3) Where an employer fails to get the accounts audited under sub-section (2) the said authority may, without prejudice to the provisions of section 28, get the accounts audited by such auditor or auditors as it thinks fit.

(4) When the accounts are audited under sub-section (2) or sub-section (3) the provisions of section 23 shall, so far as may be, apply to the accounts so audited.

(5) The expenses of , and incidental to, any audit under sub-section (3) (including the remuneration of the auditor or auditors) shall be determined by the said authority (which determination shall be final) and paid by the employer and in default of such payment shall be recoverable from the employer in the manner provided in section 21.

26. Maintenance of registers, records, etc.—Every employer shall prepare and maintain such registers, records and other documents in such form and in such manner as may be prescribed.

27. Inspectors.—(1) *The appropriate Government may, by notification in the Official Gazette, appoint such*

persons as it thinks fit to be Inspectors for the purposes of this Act and may define the limits within which theyallhs exercise jurisdiction.

(2) An Inspector appointed under sub-section (1) may, for the purpose of ascertaining whether any of the provisions of this Act has been complied with—

(*a*) require an employer to furnish such information as he may consider necessary ;

(*b*) at any reasonable time and with such assistance, if any, as he thinks fit, enter any establishment or any premises connected therewith and require any one found in charge thereof to produce before him for examination any accounts, books, registers and other documents relating to the employment of persons or the payment of salary or wage or bonus in the establishment ;

(*c*) examine with respect to any matter relevant to any of the purposes aforesaid, the employer, his agent or servant or any other person found in charge of the establishment or any premises connected therewith or any person whom the Inspector has reasonable cause to believe to be or to have been an employee in the establishment ;

(*d*) make copies of, or take extracts from, any book, register or other document maintained in relation to the establishment ;

(*e*) exercise such other powers as may be prescribed.

(3) Every Inspector shall be deemed to be a public servant within the meaning of the Indian Penal Code (45 of 1860).

(4) Any person required to produce any accounts, book, register or other document or to give information by an Inspector under sub-section (1) shall be legally bound to do so.

(5) Nothing contained in this section shall enable an Inspector to require a banking company to furnish or

disclose any statement or information or to produce, or give inspection of, any of its books of account or other documents, which a banking company cannot be compelled to furnish, disclose, produce or give inspection of, under the provisions of section 34A of the Banking Companies Act, 1949 (10 of 1949).

28. Penalty.—If any person—

(*a*) contravenes any of the provisions of this Act or any rule made thereunder ; or

(*b*) to whom a direction is given or a requisition is made under this Act fails to comply with the direction or requisition,

he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

29. Offences by companies.—(1) If the person committing an offence under this Act is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly :

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemeed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(*a*) "company" means any body corporate and includes a firm or other association of individuals ; and

(*b*) "director", in relation to a firm, means a partner in the firm.

30. Cognizance of offences.—(1) No court shall take cognizance of any offence punishable under this Act, save on complaint made by or under the authority of the appropriate Government.

(2) No court inferior to that of a presidency magistrate or a magistrate of the first class shall try any offence punishable under this Act.

31. Protection of action taken under the Act.—No suit, prosecution or other legal proceeding shall lie against the Government or any officer of the Government for anything which is in good faith done or intended to be done in pursuance of this Act or any rule made thereunder.

32. Act not to apply to certain classes of employees.—Nothing in this Act shall apply to—

(*i*) employees employed by any insurer carrying on general insurance business and the employees employed by the Life Insurance Corporation of India ;

(*ii*) seamen as defined in clause (42) of section 3 of the Merchant shipping Act, 1958 (44 of 1958) ;

(*iii*) employees registered or listed under any scheme made under the Dock Workers (Regulation of Employment) Act, 1948, (9 of 1948) and employed by registered or listed employers ;

(*iv*) employees employed by an establishment engaged in any industry carried on by or under the authority of any department of the Central Government or a state Government or a local authority ;

(*v*) employees employed by—

(*a*) the Indian Red Cross Society or any other institution of a like nature (including its branches) ;

(*b*) universities and other educational institutions ;

(*c*) institutions (including hospitals, chambers of commerce and social welfare institutions) established not for purposes of profit ;

(*vi*) employees employed through contractors on building operations ;

(*vii*) employees—

(*a*) who have entered before the 29th May, 1965, into any agreement or settlement with their employers for payment of an annual bonus linked with production or productivity in lieu of bonus based on profits ; or

(*b*) who have entered or may enter after that date into any agreement or settlement with their employers for payment of such annual bonus in lieu of the bonus payable under this Act,

for the period for which such agreement or settlement is in operation ;

(*viii*) employees employed by the Reserved Bank of India ;

(*ix*) employees employed by—

(*a*) the Industrial Finance Corporation of India ;

(*b*) any Financial Corporation established under section 3, or any Joint Financial Corporation established under section 3A, of the State Financial Corporations Act, 1951 (63 of 1951 ;)

(*c*) the Deposit Insurance Corporation ;

(*d*) the Agricultural Refinance Corporation ;

(*e*) the Unit Trust of India ; and

(*f*) the Industrial Development Bank of India ;

(*x*) Employees employed by any establishment in public sector, save as otherwise provided in this Act.

33. Act to apply to certain pending disputes regarding payment of bonus.—Where, immediately before the 2nd September, 1964, any industrial dispute regarding payment of bonus relating to any accounting year, not being an accounting year earlier than the accounting year ending on any day in the year 1962, was pending before the appropriate Government or before any Tribunal or other authority under the Industrial Disputes Act, 1947 (14 of 1947), or under any corresponding law relating to investigation and settlement of industrial disputes in a State, then, the bonus shall be payable in accordance with the provisions of this Act in relation to the accounting year to which the dispute relates and any subsequent accounting year, notwithstanding that in respect of that subsequent accounting year no such dispute was pending.

Explanation.—A dispute shall be deemed to be pending before the appropriate Government where no decision of that Government on any application made to it under the said Act or such corresponding law for reference of that dispute to adjudication has been made or where having received the report of the Conciliation Officer (by whatever designation known) under the said Act or law, the appropriate Government has not passed any order refusing to make such reference.

34. Effect of laws and agreements inconsistent with the Act.—(1) Save as otherwise provided in this section, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in the terms of any award, agreement, settlement or contract of service made before the 29th May, 1965.

(2) If in respect of any accounting year the total bonus payable to all the employees in any establishment under this Act is less than the total bonus paid or payable to all the employees in that establishment in respect of the base year under any award, agreement, settlement or contract of service, then, the employees in the establishment shall be paid bonus in respect of that accounting

year as if the allocable surplus for the accounting year were an amount which bears the same ratio to the gross profits of the said accounting year as the total bonus paid or payable in respect of the base year bears to the gross profits of the base year :

Provided that nothing contained in this sub-section shall entitle any employee to be paid bonus exceeding twenty per cent of his salary or wage for the accounting year :

Provided further that if in any accounting year the allocable surplus computed as aforesaid exceeds the amount of maximum bonus payable to the employees in the establishment under the first proviso, then, the provisions of section 15 shall, so far as may be, apply to such excess.

Explanation I.—For the purpose of this sub-section, the total bonus in respect of any accounting year shall be deemed to be less than the total bonus paid or payable in respect of the base year if the ratio of bonus payable in respect of the accounting year to the gross profits of that year is less than the ratio of bonus paid or payable in respect of the base year to the gross profits of that year.

Explanation II.—In this sub-section,—

(*a*) "base year" means—

(*i*) in a case where immediately before the 2nd September, 1964, any dispute of the nature specified in section 33 was pending before the appropriate Government or before any Tribunal or other authority under the Industrial Disputes Act, 1947 (14 of 1947), or under any corresponding law relating to investigation and sttlement of industrial disputes in a State, the accounting year immediately preceding the accounting year to which the dispute relates ;

(*ii*) in any other case, the period of twelve months immediately preceding the accounting year in which this Act becomes applicable to the establishment ;

(*b*) "gross profits" in relation to the base year or, as the case may be, to the accountaing year, means gross profits as reduced by the direct taxes payable by the employer in respect of that year.

(3) Nothing contained in this Act shall be construed to preclude employees employed in any establishment or class of establishments from entering into agreement with their employer for granting them an amount of bonus under a formula is different from that under this Act.

35. Saving.—Nothing contained in this Act shall be deemed to affect the provisions of the Coal Mines Provident Fund and Bonus Schemes Act, 1948 (46 of 1948) or of any scheme made thereunder.

36. Power of exemption.—If the appropriate Government, having regard to the financial position and other relevant circumstances of any establishment or class of establishments, is of opinion that it will not be in public interest to apply all or any of the provisions of this Act thereto, it may, by notification in the Official Gazette, exempt for such period as may be specified therein and subject to such conditions as it may think fit to impose, such establishment or class of establishments from all or any of the provisions of this Act.

37. Power to remove difficulties.—If any difficulty or doubt arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provision, not inconsistent with the purposes of this Act as appears to it to be necessary or expedient for the removal of the difficulty or doubt; and the order of the Central Government, in such cases, shall be final.

38. Power to make rules.—(1) The Central Government may make rules for the purpose of carrying into effect the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for—

(*a*) the authority for granting permission under the proviso to sub-clause (*iii*) of clause (1) of section 2 ;

(*b*) the preparation of registers, records and other documents and the form and manner in which such registers, records and documents may be maintained under section 26 ;

(*c*) the powers which may be exercised by an Inspector under clause (*e*) of sub-section (2) of section 27 ;

(*d*) any other matter which is to be, or may be, prescribed.

(3) Every rule made under this section shall be laid as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days, which may be comprised in one session or in two successive sessions, and if before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be ; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

39. Application of certain laws not barred.—Save as otherwise expressly provided, the provisions of this Act shall be in addition to and not in derogation of the Industrial Disputes Act, 1947 (14 of 1947), or any corresponding law relating to investigation and settlement of industrial disputes in force in a State.

40. Repeal and saving.—(1) The payment of Bonus Ordinance, 1965 (3 of 1965), is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under this Act as if this Act had commenced on the 29th May, 1965.

THE FIRST SCHEDULE.

[*See* section 4 (*a*)].

COMPUTATION OF GROSS PROFITS.

Accounting Year ending.....

Item No.	*Particulars*	*Amount of sub-items*	*Amount of main items*	*Remarks*
1	2	3	4	5
		Rs.	Rs.	
*1.	*Net Profits* as shown in the Profit and Loss Account after making usual and necessary provisions.			
2.	*Add back* provision for :			
	(*a*) Bonus.			
	(*b*) Depreciation.			
	(*c*) Development Rebate Reserve.			*See* foot-note (1)
	(*d*) Any other reserves			*See* foot-note (1)
	Total of Item No. 2	Rs.		
3.	*Add back* also :			
	(*a*) Bonus paid in respect of previous accounting years.			*See* foot-note (1)
	(*b*) Donations in excess of the amount admissible for income-tax.			

*Where the profit subject to taxation is shown in the Profit and Loss Account and the provision made for taxes on income is shown, the actual provision for taxes on income shall be deducted from the profit.

1	2	3	4	5
		Rs.	Rs.	
	(*c*) Capital expenditure (other than capital expenditure on scientific research which is allowed as a deduction under any law for the time being in force relating to direct taxes) and capital losses (other than losses on sale of capital assets on which depreciation has been allowed for income-tax).			*See* foot-note ( )
	(*d*) Any amount certified by the Reserve Bank of India in terms of sub-section (2) of section 34A of the Banking Companies Act, 1949 (10 of of 1949).			
	(*e*) Losses of, or expenditure relating to, any business situated outside India.			
	Total of Item No. 3	Rs.		
4.	*Add also* Income, profits or gains (if any) credited directly to published or disclosed reserves, *other than*—			
	(*i*) capital receipts and capital profits (including profits on the sale of capital assets on which depreciation has not been allowed for income-tax) ;			

1	2	3	4	5
		Rs.	Rs.	
	(*ii*) profits of, and receipts relating to, any business situated outside India ;			
	(*iii*) income of foreign banking companies from investments outside India.			
	Net total of Item No. 4	Rs.		
5.	Total of Item Nos. 1, 2, 3 and 4.		Rs.	
6.	*Deduct :*			
	(*a*) Capital receipts and capital profits (other than profits on the sale of assets on which depreciation has been allowed for Income-tax).			*See foot-note* (2)
	(*b*) Profits of, and receipts relating to, any business situated outside India.			*See* foot-note (2)
	(*c*) Income of foreign banking companies from investments outside India.			*See foot-note* (2)
	(*d*) Expenditure or losses (if any) debited directly to published or disclosed reserves, *other than*—			
	(*i*) capital expenditure and capital losses (other than losses on sale of capital assets on which depreciation has not been allowed for income-tax ;			

1	2	3	4	5
	(*ii*) losses of any business situated outside India.			
	(*e*) In the case of foreign banking companies proportionate administrative (overhead) expenses of Head Office allocable to Indian business.		*See* foot-note (3)	
	(*f*) Refund of any excess direct tax paid for previous accounting years and excess provision, if any, of previous accounting years, relating to bonus, depreciation, or development rebate, if written back.		*See* foot-note (2)	
	(*g*) Subsidy, if any, received from Government or from any body corporate established by any law for the time being in force.		*See* foot-note (2)	
	Total of Item No. 6	Rs.		
7.	Gross Profits for purposes of bonus (Item No. 5 minus Item No. 6).	Rs.		

Foot-notes—

(1) If, and to the extent, charged to Profit and Loss Account.

(2) If, and to the extent, credited to Profit and Loss Account.

(3) In the proportion of Indian Gross Profit (Item No. 7) to Total World Gross Profit (as per consolidated Profit and Loss Account, adjusted as in Item No. 2 above only).

THE SECOND SCHEDULE

[*See* section 4 (*b*)]

COMPUTATION OF GROSS PROFITS

Accounting Year ending.....

Item No.	Particulars	Amount of sub-items	Amount of main Items	Remarks
		Rs.	Rs.	
1.	*Net Profit* as per Profit and Loss Account.			
2.	*Add back* provision for:			
	(*a*) Bonus.			
	(*b*) Depreciation.			
	(*c*) Direct taxes, including the provision (if any) for previous accounting years.			
	(*d*) Development rebate/ Development allowance reserve.			*See* foot-note (1)
	(*e*) Any other reserves			*See* foot-note (1)
	Total of item No. 2	Rs.		
3.	*Add back* also :			
	(*a*) Bonus paid in respect of previous accounting years.			*See* foot-note (1)
	(*b*) Donations in excess of the amount admissible for income-tax.			
	(*c*) Any annuity due, or commuted value of any annuity paid under the provisions of section 280D of the Income-tax Act during the accounting year.			

1	2	3	4	5
		Rs.	Rs.	
	(*d*) Capital expenditure (other than capital expenditure on scientific research which is allowed as a deduction under any law for the time being in force relating to direct taxes) and capital losses (other than losses on sale of capital assets on which depreciation has been allowed for income-tax or agricultural income-tax)			*See* foot-note (1)
	(*e*) Losses of, or expenditure relating to, any business situated outside India.			
	Total of Item No. 3			
4.	*Add also* Income, profits or gains (if any) credited directly to reserves, *other than*— (*i*) capital receipts and capital profits (including profits on the sale of capital assets on which depreciation has not been allowed for income tax or agricultural income-tax); (*ii*) profits of, and receipts relating to, any business situated outside India ;			

1	2	3	4	5
	(*iii*) income of foreign concerns from investments outside India.	Rs.	Rs.	
	Net total of Item No. 4	Rs.		
5.	Total of Item Nos. 1, 2, 3 and 4.	Rs.		
6.	*Deduct :*			
	(*a*) Capital receipts and capital profits (other than profits on the sale of assets on which depreciation has been allowed for income-tax or agricultural income tax).			*See* foot-note (2)
	(*b*) Profits of, and receipts relating to, any business situated outside India.			*See* foot-note (2)
	(*c*) Income of foreign concerns from investments outside India.			*See* foot-note (2)
	(*d*) Expenditure or losses (if any) debited directly to reserves, *other than*—			
	(*i*) capital expenditure and capital losses (other than losses on sale of capital assets on which depreciation has not been allowed for income-tax or agricultural income-tax);			
	(*ii*) losses of any bunisess situated outside India.			

1	2	3	4	5
		Rs.	Rs.	
	(*e*) In the case of foreign concerns proportionate administrative (overhead) expenses of Head Office allocable to Indian business.			*See* foot-note (3)
	(*f*) Refund of any direct tax paid for previous accounting years and excess provisions, if any, of previous accounting years relating to bonus, depreciation, taxation or development rebate or development allowance, if written back.			*See* foot-note (2)
	(*g*) Subsidy, if any, received from Government or from any body corporate established by any law for the time being in force.			
	Total of Item No. 6	Rs.		
7.	Gross Profits for purposes of bonus (Item No. 5 minus Item No. 6).		Rs.	

Foot-notes—

(1) If, and to the extent, charged to Profit and Loss Account.

(2) If , and to the extent, credited to Profit and Loss Account.

(3) In the proportion of Indian Gross Profit (Item No. 7) to Total World Gross Profit (as per Consolidated Profit and Loss Account, adjusted as in Item No. 2 above only).

THE THIRD SCHEDULE

[*See* Section 6(*d*)]

Item No.	Category of employer	Further sums to be deducted
(1)	(2)	(3)
1.	Company other than a banking company.	(*i*) The dividends payable on its preference share capital for the accounting year calculated at the actual rate at which such dividends are payable ; (*ii*) 8.5 per cent of its paid up equity share capital as at the commencement of the accounting year ; (*iii*) 6 per cent of its reserves shown in its balance-sheet as at the commencement of the accounting year, including any profits carried forward from the previous accounting year : Provided that where the employer is a foreign company within the meaning of section 591 of the Companies Act, 1956, (1 of 1956) the total amount to be deducted under this Item shall be 8.5 per cent on the aggregate of the value of the net fixed assets and the current assets of the company in India after deducting the amount of its current liabilities (other than any amount shown as payable by the company to its Head Office whether towards any advance made by the Head Office or otherwise or any interest paid by the company to its Head Office) in India.
2.	Banking company	(*i*) The dividends payable on its preference share capital for the accounting year calculated at the rate at which such dividends are payable ; (*ii*) 7.5 per cent of its paid up equity share capital as at the commencement of the accounting year ;

(1)	(2)	(3)
		(*iii*) 5 per cent of its reserves shown in its balance-sheet as at the commencenmet of the accounting year, including any profits carried forward from the previous accounting year ; (*iv*) any sum which, in respect of the accounting year, is transferred by it— (*a*) to a reserve fund under sub-section (1) of section 17 of the Banking Companies Act, 1949 ; (10 of 1949) or (*b*) to any reserves in India in pursuance of any direction or advice given by the Reserve Bank of India, whichever is higher : Provided that where the banking company is a foreign company within the meaning of section 591 of the Companies Act, 1956, (1 of 1956) the amount to be deducted under this Item shall be the aggregate of— (*i*) the dividends payable to its preference shareholders for he- accounting year at the rate a which such dividends are p ay able on such amount as bear.t the same proportion to its total Preference Share Captial as its total working funds in India bear to its total world working funds , (*ii*) 7.5 per cent of such amount as bears the same proportion to its total paid up equity share capital as its total working funds in India bear to its total world working funds , (*iii*) 5 per cent of such amount as bears the same proportion to its total disclosed reserves as its total working funds in India bear to its total world working funds ;

(1)	(2)	(3)
		(*iv*) any sum which, in respect of the accounting year, is deposited by it with the Reserve Bank of India under sub-clause (*ii*) of clause (*b*) of sub-section (2) of section 11 of the Banking Companies Act, 1949 (10 of 1949), not exceeding the amount required under the aforesaid provision to be so deposited.
3.	Corporation	(*i*) 8.5 per cent of its paid up capital as at the commencement of the accounting year ; (*ii*) 6 per cent of its reserves, if any, shown in its balance-sheet as at the commencement of the accounting year, including any profits carried forward from the previous accounting year.
4.	Co-operative society ..	(*i*) 8.5 per cent of the capital invested by such society in its establishment as evidenced from its books of acccounts at the commencement of the accounting year ; (*ii*) such sum as has been carried forward in respect of the accounting year to a reserve fund under any law relating to co-operative societies for the time being in force.
5.	Any other employer not falling under any of the aforesaid categories.	8.5 per cent of the capital invested by him in his establishment as evidenced from his books of accounts at the commencement of the accounting year ; Provided that where such employer is a person to whom Chapter XXIIA of the Income-tax Act applies, the annuity deposit payable by him under the provisions of that Chapter during the accounting year shall also be deducted :

1	2	3
		Provided further that where such employer is a firm, an amount equal to 25 per cent of the gross profits derived by it from the establishment in respect of the accountintg year after deducting depreciation in accordance with the provisions of clause (*a*) of section 6 by way of remuneration to all the partners taking part in the conduct of business of the establishment shall also be deducted, but where the partnership agreement, whether oral or written, provides for the payment of remuneration to any such partner, and— (*i*) the total remuneration payable to all such partners is less than the said 25 per cent., the amount payable, subject to a maximum of forty-eight thousand rupees to each such partner; or (*ii*) the total remuneration payable to all such partners is higher than the said 25 per cent, such percentage, or a sum calculated at the rate of forty-eight thousand rupees to each such partner, whichever is less, shall be deducted under this proviso: Provided also that where such employer is an individual or a Hindu undivided family,— (*i*) an amount equal to 25 per cent of the gross profits derived by such employer from the establishment in respect of the accounting year after deducting depreciation in accordance with provisions of clause (*a*) of section 6; or (*ii*) forty-eight thousand rupees, which ever is less, by way of remuneration to such employer, shall also be deducted.

Item No.	Category of Employer	Further Sums to be deducted
6.	Any employer falling under Item No. I or Item No. 3 or Item No. 4 or Item No. 5 and being a licensee within the meaning of the Electricity Supply Act, 1948 (54 of 1948)	In addition to the sums deductible under any of the aforesaid Items, such sums as are required to be appropriated by the licensee in respect of the accounting year to a reserve under the Sixth Schedule to that Act shall also be deducted.

Explanation.—The expression "reserves" occurring in column (3) against Item Nos. 1 (*iii*), 2(*iii*) and 3(*ii*) shall not include any amount set apart for the purpose of—

(*i*) payment of any direct tax which, according to the balance-sheet would be payable;

(*ii*) meeting any depreciation admissible in accordance with the provisions of clause (*a*) of section 6 ;

(*iii*) payment of dividends which have been declared but shal include—

(*a*) any amount, over and above the amount referred to in clause (*i*) of this *Explanation*, set apart as specific reserve for the purpose of payment of any direct tax; and

(*b*) anyamount set apart for meeting any depreciation in excess of the amount admissible in accordance with the provisions of clause (*a*) of section 6.

THE FOURTH SCHEDULE

(*See* section 15)

In this Schedule, the total amount of bonus equal to four per cent of the annual salary or wage payable to all the employees is assumed to be Rs. 50 000. Accordingly, the maximum bonus to which all the employees are entitled to be paid (twenty per cent of the annual salary or wage of all the employees) would be Rs. 2,50,000

Year.	Amount equal to four per cent or sixty per cent or seventy per cent, as the case may be, of available surplus allocable as bonus.	Amount payable as bonus.	Set on or set off of the year carried forward.	Total set on or set off carried forward.
(1)	(2)	(3)	(4)	(5)
	Rs	Rs.	Rs.	Rs of (year)
1	70 000	70 000	Nil	Nil
2	6,35,000	2,50,000*	Set on 3,80,000*	Set on 2,50,000 (2)
	2,20,000	2,50, 00* (Inclusive of 30,000 from year-2)	Nil	Set on 2,20,000 (2)
	2,75,000	2,50,000*	Set on 1,25,000	Set on 2,20,000 (2) 1,25,000 (4)
		2,50,000* (inclusive of 1,10,000 from year-2)	Nil	Set on 1,10,000 (2) 1,25,000 (4)
		2,50,000*	Set on 60,000	Set on Nil (2) 1,25 000 (4) 60,000 (5)
	1,00,000	2,50,000* (inclusive of 1,25,000 from year-4 and 25,000 from year-5).	Nil	Set on 25,000 (6)
	Nil (due to loss)	50,000** (inclusive of 35 000 (from year-6)	Set off 15,000	Set off 15,000 (6)
	10,000	60,000**	Set off 50,000	Set off 15,000 (6) 40,000 (7)
	2,15,000	1,80,000 (after setting off 5 000 from year-6 and 40 000 from year-7)	Nil	Nil

Notes—
*Maximum.
The balance of Rs. 1,10,000 set on from year-2 lapses.
**Minimum.

STATEMENT OF OBJECTS AND REASONS

A Tripartite Commission was set up by the Government of India by their Resolution No. WB-20 (9)/61, dated the 6th December, 1961, to consider, in a comprehensive manner, the question of payment of bonus based on profits to employees employed in establishments and to make recommendations to the Government. The Commission's Report, containing their recommendations, was received by the Government on the 24th January, 1964. In their Resolution No. WB-20 (3)/64, dated the 2nd September, 1964 the Government announced acceptance of the Commission's recommendations subject to a few modifications as were mentioned therein. With a view to implement the recommendations of the Commission as accepted by the Government, the Payment of Bonus Ordinance, 1965, was promulgated on 29th May, 1965. The object of the Bill is to replace the said Ordinance.

The notes on clauses explain the various provisions of the Bill.

D. SANJIVAYYA,

NEW DELHI,
The 5th August 1965.

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Notes on clauses

Clause 1.—*Sub-clause* (2) : The subject matter of the proposed legislation is relatable to entry 24 in the Concurrent List. This entry, in so far as it relates to the State of Jammu and Kashmir, is applicable only with respect to labour employed in the coal mining industry. Even with regard to coal-mining industry, if it is carried on by a conpany, the application of the proposed legislation will raise difficulties as the Companies Act, 1956, applies to the State of Jammu and Kashmir only to the extent to which the provisions of that Act relate to the incorporation, regulation and winding up of banking, insurance and financial corporations. For this reason, the Act does not extend to the State of 'Jammu and Kashmir.'

Sub-clauses (3) *and* (4).—The provisions of the Act apply from the accounting year commencing on any day in the year 1964, to every factory ; and to every other establishment in which twenty or more persons are employed on any day during an accounting year.

Sub-clause (5).—Provision has been made in the sub-clause to the effect that an establishment to which the Act applies shall continue to be governed by the Act even if the number of persons employed therein falls below twenty, subsequently.

Clause 2.—The definition of "allocable surplus' in sub-clause (4) is based on the recommendation of the Bonus Commission made in paragraphs 9.9 and 12.1 of its report.

The definition of 'employee' in sub-clause (13) is based on the definition of 'workman' in the industrial Disputes Act , 1947 except that apprentices have been excluded. In accordance with the recommendation of the commission contained in paragraph 12.7 of its report, all persons drawing a salary or wage up to Rs. 1,600 per mensem will come within the scope of the definition of 'employee'.

The term 'salary or wage' has been defined in sub-clause (21) keeping in view the recommendation made by the Commission in paragraph 12.4 of its report that bonus should be related to wages and dearness allowance taken together and that all other allowances such as over-time wages and incentive, production and attendance bonus including attendance bonus under Statutory Bonus Schemes should be excluded.

Clause 3. This clause provides for the payment of bonus unitwise in certain cases instead of establishment-wise. The clause is based on the recommendation made by the Commission in paragraph 6.12 of its report.

Clause 4.—The manner in which gross profits derived by an employer from an establishment may be calculated has been indicated in the clause.

Clause 6.—The clause provides for deductions of certain sums from the gross profits as prior charges for the purpose of computing the available surplus. The sums so deductible are—(1) any amount by way of depreciation admissible under the income-tax law (*vide* paragraphs 9.2 and 9.3 of the report of the Commission) ; (2) any development rebate or development allowance which the employer is eintitled to deduct from his income under the Income-tax Act ; (3) all direct taxes ; and (4) the sums specified in the Third Schedule in respect of the various categories of employers mentioned therein.

Clause 7.—The clause explains how the amount of direct tax payable by the employer shall be calculated. The provisions proposed in sub-clauses (*a*) to (*d*) are based on the recommendation of the Commission made in paragraphs 9.5,9.6,9.11 and 17.20 of its report Under sub-clause (*e*), any rebate, credit, relief, etc. allowed for the development of an industry shall not be taken into account in the calculation of the direct tax payable by the employer. This provision is intended to promote the development of industries.

Clause 8.—Under the clause , an employee should have worked in the establishment at least for thirty working days in an accounting year to be entitled to be paid bonus. This provision is based on the recommendation of the Commission made in paragraph 19.14 of its report.

Clause 9.—The clause provides that an employee who has been dismissed from service for fraud, riotous or violent behaviour, theft, etc., shall not be entitled to receive bonus from the employer. The clause is based on the recommendation of the Commission made in paragraph 19.18 of its report.

Clauses 10 *and* 11.—These clauses provide for the payment of a minimum and maximum bonus by the employer to his employees. Every employee who has worked in the establishment for all the working days in an accounting year shall be entitled to be paid bonus which shall not be less than four per cent of his annual salary or wage or Rs. 40 whichever is higher, or more tha 20 per cent of his annual salary or wage. In the case of an employee under 15 years of age, the minimum bonus payable will be four per cent of his annual salary or wage or Rs. 25 whichever is higher. These provisions are based on the recommendation of the Commission m ade on paragraph 12.5 of its report.

Clause 12.—In the case of an employee drawing more than Rs. 750 but less than Rs. 1,601 per mensem, as his salary or wage, the bonus (whether minimum or maximum) payable to him, shall be calculated as if his salary or wage were Rs. 750 per mensem. The clause is based on the recommendation of the Commission made in paragraph 12.7 of its report.

Clause 13.—The clause provides for a proportionate reduction of bonus in cases where an employee has not worked for all the working

days in an accounting year. A recommendation to this effect is contained in paragraph 12.5 of the report of the Commission.

Clause 14.—The clause provides for the computation of the number of working days for the purpose of calculating the minimum and maximum bonus payable to an employee. The clause is based on the recommendation of the Commission made in paragraph 12.5 of its report and also on the provisions already existing in the Industrial Disputes Act, 1947.

Clause 15.—In certain accounting years, some amount may be left in the allocable surplus after the payment of maximum bonus to all the employees. To meet such cases, a provision for set on has been made in sub-clause (1). Similarly, in certain accounting years, there may not be any allocable surplus at all or the allocable surplus may not be sufficient to pay the minimum bonus to all the employees. To meet such contingencies, a provision for set off has been made in sub-clause (2). The amounts set on or set off have to be carried forward in the manner illustrated in the Fourth Schedule.

Sub-clause (4) provides that where in any accounting year any amount has been carried forward and set on or set off, then in calculating bonus for the succeeding accounting year, the amount of set on or set off brought forward from the earliest accounting year shall first be taken into account.

The provisions relating to set on and set off are based on the recommendation of the Commission made in paragraph 12.13 of its report.

Clause 16.—Sub-clause (1) of the clause provides for concessional treatment to newly set up establishments in matters relating to payment of bonus. In the case of newly set up establishments, bonus is payable only from the accounting year in which the employer derives profits from the establishment or from the sixth accounting year following the accounting year in which the employer sells the goods produced or manufactured by him or renders services, as the case may be, from the establishment, whichever is earlier.

Sub-clause (2) makes the provision of sub-clause (1) applicable to new departments or undertakings set up by existing establishments.

The clause seeks to give effect to the recommendation of the Commission made in paragraph 12.9 of its report.

Clause 17.—In paragraph 12.4 of its report, the Commission recommended that Puja bonus and other customary bonus, if paid, should be considered as bonus paid 'on account' and deducted from the amount finally payable as bonus. The clause is based on this recommendation. Provision has also been made in the clause for adjustment of any interim bonus paid in advance.

Clause 18.—The clause provides that where in any accounting year an employee is found guilty of misconduct causing financial loss to the employer, it shall be law ful for the employer to deduct the amount of loss from the amount of bonus payable by him to the employee. A recommendation to this effect has been made by the Commission in paragraph 19.17 of its report.

Clause 19.—The clause provides for the payment of bonus in cash and the time-limit for such payment. In cases where there is a dispute regarding payment of bonus, the bonus has to be paid within a month of the settlement or award in respect of such dispute. In other cases, bonus has to be paid within a period of eight months from the close of the accounting year. Power has been taken to extend, for sufficient reasons, the aforesaid period of eight months.

The clause generally follows the recommendation of the Commission made in paragraph 19.20 of its report.

Clause 20.—The clause provides for the application of the bonus formula to those public sector undertaking which fulfil the 20 per cent. competition test in accordance with recommendation contained in paragraph 18.8 of the Commission's report. It has also been provided that once the bonus formula is applied to such establishments, it shall continue to apply even if the 20 per cent. Competition test is not satisfied in any accounting year.

Clause 21.—The clause provides for the recovery from an employer of the amount due to an employee by way of bonus. The provision is on the lines of section 33C of the Industrial Disputes Act, 1947.

Clause 22.—The clause provides that any dispute regarding the bonus payable under the Act or with regard to the application of the Act to an establishment in public sector shall be deemed to be an industrial dispute within the meaning of the Industrial Disputes Act, 1947, or of any corresponding State Law and the provisions of the Industrial Disputes Act, 1947, or that State Law shall apply to such dispute.

Clause 23.—The clause provides, in accordance with the recommendations made in paragraphs 19.6 and 19.7 of the Commission's report, that if audited balance-sheets and profit and loss accounts of any corporation or company (other than a banking company) are produced in the course of proceedings before any authority to whom a dispute has been referred, that authority may presume the Statements and particulars contained in such balance-sheet and profit and loss account to be accurate. However, where that authority is satisfied that the particulars aforesaid are not correct, it may take necessary steps to find out the accuracy of such statements or particulars.

The authority may also, if it thinks necessary, require the corporation or the company to furnish to the union or the employees any clarification equired by the union or the employees relating to any item in the balance-rheet or the profit and loss account.

Clause 24.—This clause is intended to give effect to the recommendations made in paragraph 19.10 of the Commission's report, namely that sudited accounts of banking companies should not be questioned, but trade unions or employees may be permitted to obtain information for vrifying the amount of bonus.

Clause 25.—This clause provides for the audit of accounts of an employer, not being a corporation or a company. Where the accounts of such auemployer duly audited by qualified auditors are produced before any authority to whom a dispute has been referred, that authority shall presume the particulars contained in such accounts to be accurate. In cases where the accounts produced are not audited by qualified auditors, that authority has been given power to direct the employer to get the account audited by qualified auditors or to get the accounts audited by such auditors as it thinks fit. A recommendation to this effect is contained in paragraph 19.8 of the Commission's report.

Clause 26.—The clause provides for the maintenance of registers, records, etc., by the employer.

Clause 27.—The clause provides for the appointment of Inspectors and the powers exercisable by Inspectors.

Clause 28.—The clause provides for penalty for contravention of any of the provisions of the Act or the rules made thereunder or for non-compliance with any direction or requisition made under the Act.

Clause 32.—The clause makes the Act inapplicable to the classes of employees specified in sub-clauses (*i*) to (*x*) . The clause is based on the recommendations of the Commission contained in paragraphs 4.6; 15.20 ; 17.9 ; 17.16 ; 17.19 ; and 17.22 of its report. Institutions like the Reserve Bank of India, Industrial Financo Corporation, etc., have also been specifically excluded from the scope of the Act.

Clause 33.—The clause makes the provisions of the Act applicable to certain pending disputes relating to bonus with respect to any accounting year ending on any day in the year 1962 and subsequent accounting years. Such disputes shall be decided in accordance with the provisions of the Act.

Clause 34.—In certain establishments, the employees are getting onus under an award, agreement, settlement or contract of service which would be higher than that payable under the Act. The clause seeks to

safeguard the interest of such employees by providing that they would get bonus either on the existing basis or on the basis of the formula provided in the Act, whichever is higher.

Provision has also been made in the clause enabling the employer and the employees to enter into an agreement with regard to the payment of bonus under a formula which is different from that under the Act.

Clause 36.—The clause empowers the appropriate Government to exempt for a specified period any establishment or class of establishments from all or any of the provisions of the Act, if having regard to the financial position and other relevant circumstances of the establishment or class of establishments, the appropriate Government is satisfied that such exemption is necessary in public interest.

The First Schedule and the Second Schedule.—The First Schedule provides for the manner in which the gross profits of an employer, being a banking company, shall be calculated and the Second Schedule provides for the manner in which the gross profits of any other employer shall be calculated. These Schedules generally follow the *pro forma* suggested by the Commission in paragraph 8.10 of its report.

The Third Schedule.—This Schedule has reference to sub-clause (*d*) of clause 6. The sums deductible as prior charges under the Schedule are generally on the lines suggested by the Commission with respect to the various categories of employers (*vide* paragraphs 11.7; 11.8; 11.13; 11.17; 11.18; 15.11 and 17.5 of the report of the Commission).

The Fourth Schedule.—This Schedule follows the illustration given by the Commission in paragraph 12.13 of its report.

FINANCIAL MEMORANDUM

Under clause 22 of the Bill, any dispute arising between an employer and his employees with respect to the payment of bonus under the Act or with respect to the application of the Act to an establishment in public sector shall be deemed to be an industrial dispute and the provisions of the Industrial Disputes Act, 1947, or of any corresponding law relating to investigation and settlement of industrial disputes in force in a State shall apply to such dispute. Clause 27 of the Bill provides for the appointment of Inspectors. The work connected with the handling of disputes and inspections, in so far as it relates to establishments in respect of which the Central Government is the appropriate Government, is proposed to be entrusted to the Industrial Tribunals already set up under the Industrial Disputes Act, 1947, and the existing staff of Chief Labour Commissioners' Organisation. It is difficult at present to assess precisely the additional work-load that may be involved. The position will be reviewed in the light of the actual working of the Act when a more realistic idea of the additional work-load would be available. The Bill is not likely to involve any appreciable additional expenditure in the near future.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 38 of the Bill empowers the Central Government to make rules for carrying into effect the provisions of the Act. The matters in respect of which such rules may be made or specified in that clause. They, *inter alia*, relate to the authority for granting permission for changing the accounting year ; the preparation and maintenance of registers, records and other documents,; and the powers of Inspectors. These are matters of administrative procedure and detail. The delegation of legislative power is thus of a normal character.

CORRIGENDA

In the Gazette of India Extraordinary, Part II—Section 2—

1. No. 5, dated the 23rd February, 1965 :—

Page 84, line 20, *for* ' active ' *read* ' activate '.

No. 7, dated the 27th February, 1965 :—

(i) Page 123, line 35, *for* " 21 (2),' *read* ' 24 (2),' ;
(ii) Page 155, line 32, marginal reference, *for* ' 1 of 1922 *read* ' 11 of 1922.' ;
(iii) Page 165, line 2, *after* ' essential ' *insert* ' for ' ;
(iv) Page 189, line 7, *after* ' In the case of ' *insert* 'a ' ; and
(v) Page 194, line 35, *after* ' whereon' *insert* ' is '.

No. 12, dated the 12th March 1965 :—

Page 278, line 40, *for* ' 1,364,47,17,000 ' *read* ' 1,364,47,87,000 '.

4. No. 16, dated the 25th March 1965 :—

(i) Page 302, line 19, *for* ' Ministry of La ' *read* ' Ministry of Law ' ; and

(ii) Page 304, line 33, *for* ' 14,05,33,040 ' *read* ' 14,05,33,000 '.

5. No. 25, dated the 1st may, 1965 :—

Page 387, line 47, *after* ' Capital Outlay ' *insert* ' of the '

6. No. 28, dated the 10th May, 1965 :—

Page 423, against line 9, *insert* ' 8 of 1965 '. as marginal reference.

S. L. SHAKDHER,
Secretary,

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